

REMARKS/ARGUMENTS

Reconsideration and withdrawal of the rejections of the application are respectfully requested in view of the amendments and remarks herewith, which place the application into condition for allowance. The present amendment is being made to facilitate prosecution of the application.

I. STATUS OF THE CLAIMS AND FORMAL MATTERS

Claims 1-51 are currently pending. Claims 48-51 are hereby added. Claims 28-47 are independent and are hereby amended. No new matter has been introduced.

Support for the amendment of claims 28-47 is provided throughout the Reissue Specification as originally filed, and specifically at column 18, lines 11-28 and in FIGS. 18A to 18C.

Support for the added claims 48-51 is provided throughout the Reissue Specification as originally filed, and specifically at column 18, lines 16-38 and in FIGS. 18A to 18C.

For convenience, attached hereto is a marked up version of the changes made to the claims in this amendment from the prior amendment of January 3, 2006. The attached page is captioned “Version with markings to show changes made”.

Changes to the claims are not made for the purpose of patentability within the meaning of 35 U.S.C. §101, §102, §103, or §112. Rather, these changes are made simply for clarification and to round out the scope of protection to which Applicants are entitled.

II. REJECTIONS UNDER 35 U.S.C. §103

(A) Claims 28-33 and 38-47 were rejected under 35 U.S.C. §103(a) as allegedly unpatentable over U.S. Patent No. 5,537,440 to Eyuboglu et al. (hereinafter, merely “Eyuboglu”) in view of U.S. Patent No. 4,292,651 to Kretz et al. (hereinafter, merely “Kretz”) and U.S. Patent No. 5,563,593 to Puri.

1. First Argument – the recited references do not teach or suggest each and every element recited in the claims

Independent claim 28, as amended, is representative, and recites, *inter alia*:

“An encoding apparatus for encoding source video data which had previously been encoded . . . and had previously been decoded . . . comprising:

...
means for extracting coding information from said source video data

...
wherein the coding information is identified by the structure of a group of pictures within the source video data.” (emphasis added)

As understood by the Applicants, Eyuboglu discloses a transcoder that performs as a “decode and re-encode” transcoder with two transformations and one prediction operation. Eyuboglu requires that the predictor P_i and the transformation A_i used in the transcoder are the same as the operators P_i and A_i used in the original encoder. Col. 4, lines 25-34. There is no suggestion in Eyuboglu that the coding of the video data is identified from the structure of the group of pictures within the video data. Neither Puri nor Kretz suggest this feature.

In contrast, claim 28 recites, “the coding information is identified by the structure of a group of pictures within the source video data.” Thus, in the present application, the recited element, when read in the context of the other claim elements, provides the coding information

(or picture type data) identifies the type of encoding of the picture (e.g., intra-picture coding, predictive coding, and bi-directionally predictive coding). That is, the type of encoding is determined from the structure of a group of pictures (GOP) within the source data. Col. 18 lines 11-16 and FIGS. 18A-18C.

It is respectfully submitted that claim 28 is patentable over the combination of Eyuboglu, Kretz and Puri because those references .taken alone or in combination do not teach or suggest each and every element recited in the claim. In particular, Eyuboglu, Kretz and Puri do not teach or suggest, “the coding information is identified by the structure of a group of pictures within the source video data” as recited in claim 28.

For reasons somewhat similar to those described above with regard to independent claim 28, independent claims 29-33 and 38-47 are also believed tpatentable.

2. Second Argument – Present Application is not obvious over Eyuboglu because rejection not Properly Based Upon Common Knowledge

Applicants challenge the factual assertion in the Office Action of March 3, 2006 at page 4, item (a) as Not Properly Officially Noticed or not Properly Based Upon Common Knowledge.

Reliance on what is presumed to be the level of knowledge of one of ordinary skill in the art is improper in the absence of a specific teaching or suggestion because skill in the art cannot “act as a bridge over gaps in substantive presentation of an obviousness case...” *Al-Site Corp. v. VSI International, Inc.* 174 F.3d 1308, 50 U.S.P.Q. 2d 1161, 1171 (Fed. Cir. 1999).”

Deficiencies of the cited references cannot be remedied by general conclusions about what is “basic knowledge or common sense.” *In re Lee*, 277 F.3d 1338, 1345 (Fed. Cir. 2002)

From the MPEP 2144.03(E): “Any rejection based on assertions that a fact is well-known or is common knowledge in the art without documentary evidence to support the examiner’s conclusion should be judiciously applied. Furthermore, as noted by the court in *Ahlert*, any facts so noticed should be of notorious character and serve only to ‘fill in the gaps’ in an insubstantial manner which might exist in the evidentiary showing made by the examiner to support a particular ground for rejection. *See, for example, In re Zurko*, 258 F.3d 1379, 1386; *In re Ahlert*, 424 F.2d 1088, 1092.”

Further, “[a]s noted by the court in *In re Ahlert*, 424 F.2d 1088, 1091 (CCPA 1970), the notice of facts beyond the record which may be taken by the examiner must be ‘capable of such instant and unquestionable demonstration as to defy dispute.’ (citing *In re Knapp Monarch Co.*, 296 F.2d 230, 132 USPQ 6 (CCPA 1961)).” MPEP 2144.03.

Claim 28 is representative and recites, *inter alia*, “source video data which had previously been encoded at a previous encoding process and had previously been decoded at a previous decoding process.”

The Office Action states that Eyuboglu teaches that “transcoder will be required in many applications, for example, to change the constant bit rate video stream into a variable bit rate . . .” The Office Action then states that the passage “suggests . . . [in one case] a video bit stream could be twice transcoded to form a VBR H.261 bit stream and then transcoding a CBR H.261 video bit stream into a VBR H.261 video bit stream.” The Office Action asserts it would have been obvious “to place two transcoders in series to convert a CBR MPEG encoded video bit stream into a VBR H.261 video bit stream.”

Applicants contend that this is an impermissible reliance on Common Knowledge. The Applicants contend the conversion suggested in the Office Action is not of notorious character

nor insubstantial. Certainly, the features recited in claim 28 are not capable of “instant and unquestionable demonstration as to defy dispute.” These features are neither “basic knowledge” nor “common sense.” *In re Lee*, 277 F.3d 1338, 1345 (Fed. Cir. 2002) (“Deficiencies of the cited references cannot be remedied by the Board’s general conclusions about what is ‘basic knowledge’ or ‘common sense.’”). Applicants contend that claim 28 recites a substantive feature that can not be overcome with Common Knowledge deduced from Eyuboglu.

For reasons somewhat similar to those described above with regard to independent claim 28, independent claims 29-33 and 38-47 are also believed to be patentable.

(B) Claims 34-37 were rejected under 35 U.S.C. §103(a) as allegedly unpatentable over Eyuboglu, Kretz , Puri and Official Notice.

For reasons somewhat similar to those described above with regard to independent claim 28, independent claims 34-37 are believed to be distinguishable from from Eyuboglu, Kretz and Puri as applied by the Examiner.

III. NEW CLAIMS

New claims 48-51 are patentable for at least the reasons stated herein above with respect to claims 32 and 33. In addition, claims 48-49 and 50-51 recite a particular embodiment of the present invention for the apparatus (claim 32) and method (claim 33), respectively.

Claim 48 recites, “the structure of the group of pictures is identified by a same minimum number of frames between the I-picture and the P-picture, the P-picture and another P-picture and the I-picture and another I-picture; and a total number of frames on the group of pictures.” Thus, the structure of the group of pictures (GOP) is determined by a minimum number of frames

between the recited particular picture types and the total number of frames in the GOP. The "number of frames" between the recited picture types is the same minimum number.

Claim 49 further recites, "encoding for each picture in the group of pictures is determined by the location of a respective picture within the group of pictures." That is, encoding for each picture in the GOP is determined by that picture's location within the GOP.

A specific example is provided in the specification. FIGS. 18A to 18C illustrate one method in which the type of encoding is identified by the structure of the GOP. As shown in FIGS. 18A-18C, the structure of a GOP can be identified by the minimum number of frames "M" between I and P pictures, between P and P pictures, and between I and I pictures, and the total number of frames "N" (pictures) in the group of pictures. For example, FIG. 18A illustrates groups of pictures having an encoding structure of M=3 and N=9 in which there are 9 frames in each group and wherein there are 3 frames from each I or P frame to the respectively succeeding I or P frame. Similarly, FIG. 18B illustrates groups of pictures having an encoding structure of M=2 and N=2, and FIG. 18C illustrates groups of pictures having an encoding structure of M=1 and N=2.

When the picture type data identifies the "M" and "N" numbers, the type of encoding for each picture can be determined by the location of a respective picture within the group of pictures, and the location of a respective picture may be identified in the picture type data either by identifying each picture's location within the group of pictures or by identifying only the first picture within the group of pictures. For example, when M=3 and N=9 for a group of frames in the decoded video signal (FIG. 18A), the third frame in that group is identified as a decoded I-frame. Col. 18, lines 16-38.

CONCLUSION

Claims 1-51 are in condition for allowance. In the event the Examiner disagrees with any of statements appearing above with respect to the disclosure in the cited reference, or references, it is respectfully requested that the Examiner specifically indicate those portions of the reference, or references, providing the basis for a contrary view.

Please charge any additional fees that may be needed, and credit any overpayment, to our Deposit Account No. 50-0320.

In view of the foregoing amendments and remarks, it is believed that all of the claims in this application are patentable and Applicants respectfully request early passage to issue of the present application.

Respectfully submitted,

FROMMERM LAWRENCE & HAUG LLP
Attorneys for Applicants

By: _____


Paul A. Levy
Reg. No. 45,748
(212) 588-0800